

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

LAEL SAMONTE,)	CIVIL NO. 05-00309 HG-KSC
)	
Plaintiff,)	
)	
vs.)	
)	
KAY BAUMAN; et al.,)	
)	
Defendants.)	
_____)	

**ORDER ADOPTING THE FINDINGS AND RECOMMENDATION OF THE MAGISTRATE
JUDGE TO DENY PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT,
PRELIMINARY INJUNCTION, AND TO AMEND COMPLAINT; AND TO GRANT
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff Lael Samonte ("Plaintiff") is a Hawaii inmate incarcerated at the Florence Correctional Center in Florence, Arizona. Plaintiff has filed motions for summary judgment, preliminary injunction, and to amend his Complaint. Plaintiff proceeds pro se.

Defendant Kay Bauman, M.D., has filed an Opposition to Plaintiff's motions and a cross-motion for summary judgment. For the reasons set forth below, the Court ADOPTS the Findings and Recommendation of the Magistrate Judge to deny Plaintiff's Motions for Summary Judgment, Preliminary Injunction, and to Amend Complaint; and granting Defendants' Motion for Summary Judgment.

PROCEDURAL HISTORY

On March 17, 2006, Plaintiff filed a Motion for Summary

Judgment (Docket No. 61).

On March 24, 2006, Plaintiff filed a Motion for Preliminary Injunction. (Docket No. 64).

On April 21, 2006, Plaintiff filed a Motion for Leave to Amend Complaint. (Docket No. 73).

On April 26, 2006, Defendants filed a Cross-Motion for Summary Judgment and an Opposition to Plaintiff's Motion for Summary Judgment. (Docket No. 75).

On May 10, 2006, Defendants filed a Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction.

On June 8, 2006, Magistrate Judge Kevin S.C. Chang issued a "Findings and Recommendation to Deny Plaintiff's Motions for Summary Judgment, Preliminary Injunction, and to Amend Complaint; and to Grant Defendants' Motion for Summary Judgment." (Docket No. 83).

On June 26, 2006, Plaintiff filed an Objection to the Findings and Recommendation of the Magistrate Judge. (Docket No. 84.)

STANDARD OF REVIEW

A magistrate judge may be assigned to hear a pretrial matter dispositive of a claim for the preparation of findings and recommendations for action by the district judge. 28 U.S.C. § 636(b)(1)(B). If a party to the proceedings objects to the magistrate judge's findings or recommendations, the district

court must review de novo those portions to which objection is made. 28 U.S.C. § 636(b)(1)(C) and see United States v. Raddatz, 447 U.S. 667, 673 (1980). The district court may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge, or recommit the matter to the magistrate judge with further instructions. 28 U.S.C. § 636(b)(1)(C), Raddatz, 447 U.S. at 673-74.

De novo review means the district court must consider the matter anew, as if it had not been heard before and as if no decision previously had been rendered. See Ness v. Commissioner, 954 F.2d 1495, 1497 (9th Cir. 1992). The district court must arrive at its own independent conclusion about those portions to which objections are made, but a de novo hearing is not required. United States v. Remsing, 874 F.2d 614, 617-18 (9th Cir. 1989).

Under Rule 12(b)(6), a motion to dismiss will be granted where the plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

A complaint should not be dismissed under Rule 12(b)(6) unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted); Parks School of Business, Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995).

The district court may grant a motion to dismiss on statute

of limitations grounds "only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled." Morales v. City of Los Angeles, 214 F.3d 1151, 1153 (9th Cir. 2000).

ANALYSIS

The Court has reviewed the parties' original motions and memoranda. There is no need to hold a hearing on the matter.

Plaintiff objects to the Findings and Recommendation of the Magistrate Judge, arguing that the Findings and Recommendation is "inconsistant [sic] with the Defendants [sic] Motion to Dismiss and the Findinding [sic] and Recommendations to Grant in Part and Deny in Part Motion to Dismiss Filed by Defendant Linda Lingle." (Plaintiff's Objection at 1).

Plaintiff objects to the Findings and Recommendation as "inconsistant [sic] with the Defendants Motion to Dismiss..."¹. The Court finds Plaintiff's objection to be without particularity. Review of the Findings and Recommendation of the Magistrate Judge show them to be soundly based. Plaintiff fails to make a cognizable objection. The Court ADOPTS the Findings and Recommendation to Deny Plaintiff's Motions for Summary Judgment, Preliminary Injunction, and to Amend Complaint; and to

¹Though Plaintiff mistakenly argues that the Findings and Recommendation is inconsistent with Defendant's Motion to Dismiss, Defendant's motion was a Motion for Summary Judgment. The Court therefore interprets and applies Plaintiff's arguments with respect to a Motion for Summary Judgment.

Grant Defendants' Motion for Summary Judgment.

CONCLUSION

In accordance with the foregoing, it is HEREBY ORDERED that:

1. The Findings and Recommendation to Deny Plaintiff's Motions for Summary Judgment, Preliminary Injunction, and to Amend Complaint; and to Grant Defendants' Motion for Summary Judgment (Doc. 83) is ADOPTED as the opinion and order of this Court.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 25, 2006.



/s/ Helen Gillmor
Chief United States District Judge

Lael Samonte v. Kay Bauman, et al., Civ. No. 05-00309 HG-KSC;
**ORDER ADOPTING THE FINDINGS AND RECOMMENDATION OF THE MAGISTRATE
JUDGE TO DENY PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT,
PRELIMINARY INJUNCTION, AND TO AMEND COMPLAINT; AND TO GRANT
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**